IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 297 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

JITENDRA JYANTILAL JOSHI

Appearance:

1. Criminal Revision Application No. 297 of 1999

MR HH PATEL, PUBLIC PROSECUTOR for Petitioner No. 1

MR SV RAJU for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/07/2001

ORAL JUDGEMENT

#. This revision is directed against the order dated 7-1-1999 of Shri SD Dave, Special Judge, Ahmedabad, allowing the application of the respondent and discharging him under sec.227 of the Code of Criminal

Procedure.

#. Shri HH Patel, learned APP for the revisionist and Shri SV Raju for the respondent have been heard.

#. The contention of Shri Patel is that the impugned order is contrary to law, hence, it can not be sustained. According to him, the order is contrary to law, because sanction is prima facie valid, hence, no order for discharge could be passed by the court below. His second contention is, that adequate opportunity of hearing was not given to the revisionist to adduce evidence to show that valid sanction was granted in the instant case. As against this, the contention of Shri Raju is that the scope of interference in revision is very much limited and the order passed by the court below is perfectly legal, hence, interference is not required. He further contended, that no prejudice is going to be caused to the prosecution, because the Special Judge has already indicated in the concluding paragraph of the order that the accused can be prosecuted again after valid sanction is given by the authorized person on behalf of the Governor.

#. In order to appreciate these contentions, at first the scope of sec.227 of the Code of Criminal Procedure has to be considered. It provides that, 'if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

#. It is clear from the plain reading of sec.227 of the Code of Criminal Procedure that the Special Judge had not considered at all, what is contemplated and provided under sec.227 of the Code of Criminal Procedure. He has not indicated in the impugned order, that there is no sufficient ground for proceeding against the accused. Consequently, the order of discharge is rendered illegal and invalid.

#. So far as the contention of Shri Raju is concerned, that conditional order of discharge has been passed, I am unable to accept it. No doubt, in the concluding paragraph of the order the Special Judge has mentioned that the accused can be prosecuted again after valid sanction is given by an authorized person on behalf of the Governor, but in the operative portion of the order, it has not qualified the observation that the accused can

be prosecuted again after valid sanction is obtained. Any observation in the body of the order will not govern the operative portion of the order. The operative portion of the order grants unconditional discharge under sec.227 of the Code of Criminal Procedure on the ground that the sanction granted for the prosecution of the respondent is illegal and it was not granted by the authorized person. These two contradictions can hardly be reconciled. Moreover, the effect of discharge is in the nature of acquittal and a person who has been discharged can not be prosecuted again after obtaining a valid sanction.

#. The Special Judge has considered the validity of the sanction. The consideration of the Special Judge is again contrary to the provisions of law and he did not care to go through the sanction and the provisions of sec.19 of the Prevention of Corruption Act. The respondent is to be prosecuted under secs.7 and 13(2) of the Prevention of Corruption Act. He is a public servant. Consequently, sanction for his prosecution is a condition precedent as provided under sec.19(1) of the Prevention of Corruption Act.

#. Sec.19(1) of the Prevention of Corruption Act provides that, no court shall take cognizance of an offence punishable under secs.7, 10, 11, 13 & 15 alleged to have been committed by a public servant, except with the previous sanction. It has been informed by Shri Raju that charges have not been framed against the respondent, whereas, learned APP states that charges have been framed. However, there is no material to show that charges have actually been framed. However, cognizance has already been taken by the Special Judge. Papers have been placed before him and the same were scrutinized, so also the sanction. Consequently, at that stage, he was required to give a finding, whether this sanction is valid or not, and not that he could have discharged the accused on the ground of invalidity of the sanction.

#. Sec.19(1)(b) of the Prevention of Corruption Act provides that, sanction is to be obtained in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government.

##. It is thus clear that the respondent, who was Special Land Acquisition Officer, is a person who can not be removed from his office except with the sanction of the State Government, and as such, sanction for his

prosecution has also to be accorded by the State Government. If, sanction is to be accorded by the State Government, it has to be authenticated in the name of the Governor of the State and not in the name of the Chief Minister, nor in the name of the Chief Secretary or Deputy Secretary. Translated copy of sanction has been filed today by the learned APP. It has been examined. It shows that all the papers were placed before the Chief Minister, who examined it and then necessary sanction was accorded by the Governor of the State. The Governor of the State has not to communicate sanction to the prosecuting agency. Such communication is to be made by any officer of the State, and if, this communication was made by Shri DJ Parmar, Deputy Secretary (Revenue Department), Government of Gujarat, it can hardly be said that sanction was actually granted by the Deputy Secretary. The last line of sanction reads as under :

"By order of and on behalf of the Governor of Gujarat"

It is thus clear, that for all purposes, sanction was granted by the State Government in the name of the Governor of Gujarat and it is a valid sanction. Communication by Shri DJ Parmar, Deputy Secretary to the prosecuting agency will not render the sanction invalid. I am, therefore, of the view that the learned Special Judge totally ignoring the provisions of sec.227 of the Code of Criminal Procedure and sec.19 of the Prevention of Corruption Act, has passed the impugned order, which is contrary to law. As such, the revision succeeds and is hereby allowed. The impugned order is quashed and set aside. The Special Judge shall proceed to try the respondent in accordance with law.

July 12, 2001. (D.C. Srivastava, J.)

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